

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-218

In re Applications of

ISIS BROADCASTING GROUP	File No. BPH-880301MG
JOELMART, INC.	File No. BPH-880301MJ
GRAZIANO BROADCASTING COMPANY	File No. BPH-880301NA
CHANEL BROADCASTING	File No. BPH-880301NH
P & T COMMUNICATIONS, INC.	File No. BPH-880301NO
DEBORAH LYNN SCZUDLO	File No. BPH-880301OA
YING HUA BENNS	File No. BPH-880301OE
DELTA BROADCASTING, INC.	File No. BPH-880301OL

For Construction Permit For A New
FM Station on Channel 299B1
Santa Barbara, California

ORDER

Adopted: November 27, 1995; Released: November 28, 1995

1. This order grants Joint Requests for Approval of Settlement Agreements filed by Joelmart, Inc. and Isis Broadcasting Group, Graziano Broadcasting Company and Delta Broadcasting, Inc. on July 21, 1995 and by Joelmart and Chanel Broadcasting on September 8, 1995. Supplements to the Joint Requests were filed by Graziano on August 1, 1995, by Isis on August 15, 1995, by Delta on August 18, 1995, by Chanel on September 22, 1995, and by Chanel and Joelmart on November 21, 1995. Comments in support of the Joint Requests were filed by the Mass Media Bureau on September 27, 1995.¹

2. By its Memorandum Opinion and Order, 8 FCC Rcd 7040 (1993), the Commission affirmed the Review Board's Decision, 7 FCC Rcd 5125 (Rev. Bd. 1992), *recon. denied*, 8 FCC Rcd 24 (Rev. Bd. 1992), granting Delta's application. Thereafter, Chanel, Isis, and Graziano filed appeals of the Commission's denial of their applications with the United States Court of Appeals for the District of Columbia Circuit (Case Nos. 93-1709, 1710, and 1713). Joelmart sought reconsideration of the Commission's ruling.² By its Order of August 12, 1994, the Court of Appeals remanded this case to the Commission for further consideration.³

3. The parties have now entered into settlement agreements which they have attached to their Joint Requests. Pursuant to those agreements, Joelmart would pay Isis, Graziano, Chanel, and Delta a total of \$55,000.00,⁴ \$75,000.00, \$20,000.00,⁵ and \$55,000.00,⁶ respectively, Joelmart's application would be granted and the applications of Isis, Graziano, Chanel, and Delta would be dismissed.

4. The Joint Requests comply in all respects with the provisions of 47 U.S.C. § 311(c) and pertinent requirements of 47 C.F.R. § 73.3525(a) governing settlement agreements. Each of the applicants has provided a sworn statement that there is no other consideration for the dismissal of these applications, that these applications were not filed for the purpose of reaching or carrying out a settlement agreement, and that approval of the agreement will serve the public interest by facilitating the institution of new FM service for Santa Barbara, California, and by terminating this litigation. Finally, Isis, Graziano, Chanel, and Delta have provided appropriate documentation dem-

¹ Joelmart also filed a Motion for Referral to Court on July 21, 1995, Chanel filed an Opposition on August 3, 1995, and Joelmart filed a Reply on August 15, 1995.

² Joelmart filed a Petition for Reconsideration on October 25, 1993 that was dismissed by Order, FCC 93I-071, released December 8, 1993 (OGC). Joelmart filed a second Petition for Reconsideration on January 7, 1994, and Delta filed an Opposition to the latter pleading on January 14, 1994.

³ No appeal or petition for reconsideration of the Commission's ruling was filed by P & T Communications, Deborah Lynn Sczudlo, or Ying Hua Benns. Therefore the denial of their applications is final and they are entitled to no further consideration in this proceeding.

⁴ The agreement between Joelmart and Isis further provides for a total payment of \$82,500.00 if the \$55,000.00 is not paid within five days of receipt by Joelmart's counsel of notice by Isis that Joelmart has failed to make the \$55,000.00 payment within five days after the grant of Joelmart's application has become final.

⁵ The agreement between Joelmart and Chanel further provides

for a total payment of \$30,000.00 if the \$20,000.00 is not paid within five days of receipt by Joelmart's counsel of notice by Chanel that Joelmart has failed to make the \$20,000.00 payment within five days after the grant of Joelmart's application has become final.

⁶ Joelmart will pay Delta \$15,000.00 and give a Promissory Note, to be executed after approval by the Commission of the parties' agreement, in the amount of \$40,000.00 to Thomas Moyer, who is a nonvoting stockholder with a 70 percent equity interest in Delta. Pursuant to a Conversion Agreement, to be executed at the same time as the Promissory Note, Moyer may convert the note to nonvoting stock in Joelmart, within thirty days of Joelmart's receipt of a construction permit for Channel 299B1, upon payment of \$7,500.00 by Moyer to Joelmart and Moyer's assumption of 50 percent of all past, present, or future costs and obligations of Joelmart.

onstrating legitimate and prudent expenses in the preparation, filing, and prosecution of their applications and, in any event, the Commission has waived the limitations on payments to dismissing applicants in circumstances such as are presented here. *Public Notice*, FCC 95-391, released September 15, 1995.

5. ACCORDINGLY, IT IS ORDERED, That the Joint Requests for Approval of Settlement Agreement filed by Joelmart, Inc. and Isis Broadcasting Group, Graziano Broadcasting Company and Delta Broadcasting, Inc. on July 21, 1995 and by Joelmart and Chanel Broadcasting on September 8, 1995 ARE GRANTED; that the attached settlement agreements ARE APPROVED; that the applications of Isis Broadcasting Group (File No. BPH-880301MG), Graziano Broadcasting Company (File No. BPH-880301NA), Chanel Broadcasting (File No. BPH-880301NH), and Delta Broadcasting, Inc. (File No. BPH-880301OL) ARE DISMISSED; that the Petition for Reconsideration and the Motion for Referral to Court filed January 7, 1994 and July 21, 1995 by Joelmart, Inc. ARE DISMISSED; that the application of Joelmart, Inc. (File No. BPH-880301MJ) IS GRANTED; and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

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